



STATE OF WASHINGTON  
WASHINGTON STATE BOARD OF HEALTH  
*1102 SE Quince Street • PO Box 47990  
Olympia, Washington 98504-7990*

January 28, 2004

The Honorable Pam Roach, Chair  
Senate Government Operations & Elections Committee  
202 Irv Newhouse Building  
Post Office Box 40431  
Olympia Washington 98504-0431

Dear Senator Roach:

I am writing as chair of the Washington State Board of Health to express my opposition to Senate Bill 6275, which is scheduled for hearing in your committee this afternoon. The bill would require a state agency to adopt a finding of necessity before creating or amending a significant legislative rule.

The Board has three primary functions—recommending public health policy, developing rules, and serving as a public forum. Because it sees the public forum role as central to its mission, it is careful to ensure that all its processes are open, participatory, and deliberative. This extends to rule making.

Several Board rule revisions currently underway are excellent examples of deliberative and consultative processes that proactively involve a host of stakeholders. These include the work of the Onsite Sewage Rule Development Committee and the efforts to update various rules related to counseling and testing that were developed under 1988 AIDS Omnibus Act. Board staff is available to discuss the details of any Board rule processes. The Board has been pleased to work closely with DOH on most of its rules; DOH is arguably one of the best examples in state government of agency-wide commitment to open rule making, thorough stakeholder work, and strong public engagement.

The Board currently files a CR-101—Preproposal Statement of Inquiry as early as reasonably possible when considering a new rule or a rule amendment. It determines a process for eliciting substantive input from significant stakeholders—often this takes the form of a workgroup, an advisory committee, or a collaborative—and carefully considers any comments it receives without racing to judgment. It does not start the process with a draft rule or predetermined outcome in mind, and it circulates discussion drafts of the proposal rule before filing a formal proposal under RCW 34.05.320. Most of the heavy lifting on rule writing is done during this phase, before the filing of a CR-102.

The Board, therefore, is generally sympathetic to efforts that would make rule making as transparent as possible. The Board also works hard to avoid unnecessary rule revisions and is always looking for less intrusive forms of regulation that still protect public health and safety. At the same time, however, the Board is committed to being efficient, effective, and responsive. This bill would make government less efficient.

We estimate the bill would lengthen the timeline for developing most rules by about a year. Several times in recent years the Board has heard concerns expressed by business, the public, and lawmakers

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about the length of time needed to develop a major rule under current procedures. One example would be the current effort to revise the food code. Accelerating that process was the subject of legislation in the 2003 session. This rule would aggravate those kinds of concerns. There are also times when public health and safety requires prompt action. A case in point would be when the Board wrote isolation and quarantine rules in response to heightened concerns about bioterrorism following September 11. In such instances, we need something more deliberative and consultative than emergency rule making, but a process that is streamlined nonetheless.

This bill would also dramatically increase the cost of rule making. The Board has cut back its meeting schedule because of several years in a row of budget cuts. We expect that this bill would necessitate additional meetings, which would also mean additional per diem, staff time, meeting room rentals, and travel costs. As I noted above, the Board works closely with DOH on most rule development. The department estimates that it would need to add staff to meet the new requirements.

Finally, the legislation is not clear about where the new requirements would fit within the existing filing process. This bill would require an agency to issue findings of fact and demonstrate that a proposed rule is the least burdensome and most cost-effective alternative before formally proposing a change. It would also require a cost-benefit analysis. It is not clear how these would relate to current requirements for a significant legislative rule analysis and a small business economic impact statement. The Board and DOH currently perform these analyses prior to filing a proposal, although are only required now when actually adopting a new or amended rule. It is not clear whether this bill intends that the new requirement supplant or be in addition to current requirement for similar studies.

Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Lake".

Linda Lake, Chair  
Washington State Board of Health

cc: Senator Bob Morton  
Senate Government Operations & Elections Committee  
State Board of Health Members  
Claire Hesselholt, Governor's Office of Health Policy  
Steve Meyer, Department of Health  
Don Sloma, State Board of Health